

(1975) 03 AHC CK 0007**Allahabad High Court (Lucknow Bench)****Case No:** Civil Revision No. 198 of 1974

V.D. Tripathi and Others

APPELLANT

Vs

Vijai Shanker Dwivedi and Others

RESPONDENT

Date of Decision: March 17, 1975**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2
- Uttar Pradesh Intermediate Education Act, 1921 - Section 15

Citation: AIR 1976 All 97**Hon'ble Judges:** O.P. Trivedi, J**Bench:** Single Bench**Advocate:** B.S. Bajpal and K.B. Sinha, for the Appellant; U.C. Srivastava, S.K. Kalli and S.D. Misra, for the Respondent**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

O.P. Trivedi, J.

This is a revision by V. D. Tripathi Inter College, Miyanganj at Unnao (hereinafter referred to as the College) its Managing Committee, its Manager Jata Shanker Shukla and the President Chaudhri Siddique Ahmed.

2. Vijai Shanker Dwivedi filed a suit before Munsif North, Unnao against the revisionists saying that prior to 8-11-1971 this institution had the status of a High School. It was raised to the status of an Intermediate College on the said date. Before it became a College Vijai Shanker Dwivedi was serving the institution as its Head Master since 1957. The Managing Committee of the institution gassed a resolution on 13-12-1971 resolving to promote the opposite as Principal of the College and appointed a Selection Committee to proceed with the selection. Subsequently opposite party No. 1 Vijai Shanker Dwivedi ran into disfavours with the Manager who did not take any further proceedings towards enforcement of the said

resolution and did not call the meeting of the Selection Committee for final selection to the post and the resolution of the Selection-Committee was never forwarded to the Department of Education for approval. It was alleged further that defendant-revisionist were threatening to suspend the plaintiff-opposite party. On these facts and allegations, in the main, the opposite party prayed for a mandatory injunction directing defendant-revisionists to carry out the resolution of 13-12-1971 by calling the meeting of the Selection Committee and by submitting necessary papers regarding plaintiff's promotion to the Department of Education for final approval. There was also a prayer for permanent injunction restraining the defendant-revisionists from interfering with the day-to-day working of the plaintiff as Principal of the institution.

3. During the pendency of the suit Vijai Shanker Dwivedi moved an application under Order 39, Rule 2 of the CPC before the Munsif and prayed for a temporary injunction restraining defendant-revisionists from taking any steps for his suspension. The Munsif granted an ad interim injunction restraining the defendants from suspending or removing the plaintiff from the office of Principal till further orders. This injunction was, however, eventually vacated by the Munsif and the application for injunction was dismissed on 30-5-1974. Vijai Shanker Dwivedi appealed. The Civil Judge, Unnao, allowed the appeal and restored the ad interim injunction order of the Munsif dated 23-4-1973 in terms quoted above.

4. It is from this order of the Civil Judge dated 15-10-1974 that the present revision arises. I have heard Sri K. B. Sinha appearing for the institution and Sri S. D. Misra appearing for Vijai Shanker Dwivedi. The Civil Judge has committed a number of material irregularities in passing the injunction. First and foremost, there was no prayer in the plaint for permanent injunction restraining the defendants from suspending the plaintiff. There was also no prayer for injunction in the suit restraining the defendants from removing the plaintiff. The only prayer that the suit contained was for restraining defendants from interfering with the day-to-day working of the plaintiff as Principal.

For the first time in the application under Order 39, Rule 2 a prayer was made to the effect that the defendants be restrained from taking any steps for suspension of the plaintiff. Even in this application there was no prayer for injunction restraining the defendants from removing the plaintiff. Temporary injunction under Order 39, Rule 2 of the CPC can be granted on the terms of the prayer for permanent injunction in the suit and not in different terms. In para 16 of the plaint although there was mention made of a threat and yet the plaintiff chose not to pray for a permanent injunction restraining the defendants from suspending him and felt contended merely with the prayer for restraining defendants from interfering with his day-to-day working as Principal. The view which I take is supported by an authority of the Gujarat High Court in Zandaram Joitaram and Another Vs. Prahladrao Vithalrao. It was held that when the suit is for a permanent injunction of particular

kind, an interim injunction of the same kind can be issued but not of a different kind. The temporary injunction restraining the defendants from suspending the plaintiff was not an injunction of the same or like kind but of a different kind. The lower court, therefore, acted illegally and with material irregularity in granting injunction as regards suspension when no such injunction was prayed for in the suit. In the second place, it was conceded before the appellate court on behalf of Vijai Shanker Dwivedi that an order of suspension had been passed against him on 19-4-1973. The suit was filed subsequently on 23-4-1973. His contention was that although the order of suspension was passed on the said date the same was not communicated to him. The admitted position being that an order of suspension had already been passed, there was no question of a temporary injunction restraining the defendants from suspending the plaintiff. In so far as the question whether the suspension order of 19-4-1973 had or had no been communicated to the plaintiff it was ,a highly controversial question and could be decided only at the trial and on the evidence of parties and not in appeal. This was, therefore, another material irregularity which the lower court's order disclosed in the matter of injunction regarding the suspension of the plaintiff. As regards the injunction for plaintiff's removal, here again the lower court acted with material irregularity. The plaint did not contain any prayer for permanent injunction restraining the defendants from removing him and there was no such prayer even in the application for temporary injunction. In issuing such an injunction under Order 39, Rule 2 of the CPC in the circumstances the lower appellate court acted clearly contrary to all recognised canons of procedure. In the matter of determining the question of irreparable injury and balancing of convenience of parties also the Civil Judge grievously erred. There could be no irreparable injury caused to the plaintiff on refusal of injunction so far as his removal was concerned as he could be compensated in damages in a separate action brought for the purpose and in balancing the convenience of parties he lost sight of Section 14(1)(a) of the Specific Relief Act under which a contract for the non-performance of which compensation in money is an adequate relief cannot be specifically enforced. Therefore the services of an employee cannot be foisted on an unwilling employer and the proper remedy of the employee is not to seek an injunction but to sue for compensation or damages for being forced out of office. In balancing the convenience of parties the Civil Judge also lost sight of Regulation 29 of the Regulations framed under the Intermediate Education Act. This regulation empowers the Committee of Management in its discretion or on the recommendation of an enquiring agency to suspend any employee pending enquiry if the allegations are serious enough and may lead to his dismissal, removal or reduction in rank. There may have been serious allegations against Vijai Shanker Dwivedi or there may be a future occasion for taking such disciplinary action against him as is contemplated by Regulation 39. It was wholly irregular to restrain the Committee of Management from the exercise of its discretion in the matter of suspension of the opposite party in the circumstances and the conditions provided by Regulation 39 and to confer on this employee an immunity against any

disciplinary action even in the event of the gravest of charges being levelled against him was, to say the least to act in a manner wholly unwarranted by known procedure. The revision, therefore, must succeed.

5. The revision is accordingly allowed. The judgments and order dated 15-10-1974 passed by the Civil Judge, Unnao, are set aside and the application under Order 39, Rule 2 of the CPC of Vijai Shanker Dwivedi, opposite party No. 1, stands dismissed with costs.